

B104 (FORM 104) (08/07)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Robert L. Berger, solely in his capacity as Settlement Trustee of the Diocese of Davenport Qualified Settlement Trust	<b>DEFENDANTS</b> University of St. Mary of the Lake, Mundelein Seminary; Archdiocese of Chicago	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd., 11 <sup>th</sup> Floor Los Angeles, CA 90067 Telephone: (310) 277-6910	<b>ATTORNEYS</b> (If Known)	
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other (Settlement Trustee) <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) To Avoid Preferential Transfers and Fraudulent Transfers (11 U.S.C. §§544, 547, 548, 550 and I.C.A. Chapter 684)		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 119,299.75 plus interest	
Other Relief Sought		

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR DIOCESE OF DAVENPORT		BANKRUPTCY CASE NO. 06-02229-lmj11
DISTRICT IN WHICH CASE IS PENDING SOUTHERN DISTRICT	DIVISION OFFICE DAVENPORT	NAME OF JUDGE HON. LEE M. JACKWIG
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/ Gillian N. Brown</i>		
DATE October 9, 2008	PRINT NAME OF ATTORNEY (OR PLAINTIFF) GILLIAN N. BROWN	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

IN THE MATTER OF	)	Case No. 06-02229-lmj11
DIOCESE OF DAVENPORT,	)	
	)	Chapter 11
Debtor.	)	
	)	Honorable Lee M. Jackwig
	)	
ROBERT L. BERGER, solely in his capacity	)	
as Settlement Trustee of the Diocese of Davenport	)	
Qualified Settlement Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNIVERSITY OF ST MARY OF THE LAKE,	)	
MUNDELEIN SEMINARY; ARCHDIOCESE OF	)	
CHICAGO, a corporation sole,	)	
	)	
Defendants.	)	
	)	

**COMPLAINT FOR AVOIDANCE AND RECOVERY**  
**OF FRAUDULENT AND PREFERENTIAL TRANSFERS**

Robert L. Berger, solely in his capacity as Settlement Trustee of the Diocese of Davenport Qualified Settlement Trust (the "Plaintiff" or "Settlement Trustee"), by and through his undersigned counsel, for his *Complaint for Avoidance and Recovery of Fraudulent and Preferential Transfers* (the "Complaint") against the University of St. Mary of the Lake, Mundelein Seminary (the "Defendant"), alleges as follows:

### **The Parties**

1. Plaintiff, the Settlement Trustee, was appointed by an Order of this Court to commence and prosecute any avoidance actions of the Diocese of Davenport.
2. Upon information and belief, Defendant is located in Mundelein, Illinois and is organized under the laws of the state of Illinois.
3. Upon information and belief, Defendant Archdiocese of Chicago ("Defendant Archdiocese," together with Defendant Seminary, the "Defendants") is a corporation sole organized under the laws of the state of Illinois.

### **Jurisdiction and Venue**

4. The Court has jurisdiction over this matter under the Bankruptcy Code, 11 U.S.C. §101 *et seq.* (the "Bankruptcy Code") and pursuant to 28 U.S.C. §§157(a) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. §157.
5. Venue in this district is proper pursuant to 28 U.S.C. §1409(a).
6. The statutory predicates for the relief requested herein are Sections 547, 548 and 550 of the Bankruptcy Code; Federal Rules of Bankruptcy Procedure 7001(1); and Iowa Code Annotated ("I.C.A.") Chapter 684.

### **General Allegations**

#### **The Diocese and the Settlement Trustee**

7. On October 10, 2006 (the "Petition Date"), the Diocese of Davenport (the "Diocese") filed a voluntary petition for relief under the Bankruptcy Code.

8. On May 1, 2008, the Court entered the *Order Confirming Debtor's Second Amended Joint Plan of Reorganization* (the "Confirmation Order").

9. Paragraph 4 of the Confirmation Order appointed Robert L. Berger as Settlement Trustee of the Diocese of Davenport Qualified Settlement Trust.

10. Per Article 13.13 of the *Second Amended Joint Plan of Reorganization Proposed by Debtor and Official Committee of Unsecured Creditors, dated as of April 3, 2008* (the "Plan"), "The Settlement Trustee shall have all of the rights and remedies of the Debtor [the Diocese of Davenport] and the Reorganized Debtor as of the Effective Date with respect to, and may commence and prosecute, any Avoidance Action."

11. The Effective Date in this bankruptcy case was June 9, 2008.

#### **Payments to Defendant**

12. On or about September 21, 2006, a transfer of the Diocese's money was made to Defendants, or one of them, in the total amount of \$118,320.00 (the "First Transfer") by check number 23788-2386 drawn on the Diocese's bank account. A document reflecting the invoice for this First Transfer is attached hereto as **Exhibit 1**.

13. On or about October 9, 2006, a transfer of the Diocese's money was made to Defendants, or one of them, in the total amount of \$979.75 (the "Second Transfer," collectively with the First Transfer, the "Transfers") by check number 2178-2394 drawn on the Diocese's bank account.

14. The Settlement Trustee is informed and believes that at least one creditor holding an unsecured claim that is allowable under Section 502 of the Bankruptcy Code or

that is not allowable under Section 502(e) of the Bankruptcy Code exists, who can avoid the Transfers and/or obligations referred to in this Complaint. The Settlement Trustee may assert the rights of such creditors pursuant to Section 544(b) of the Bankruptcy Code.

**FIRST CLAIM FOR RELIEF**

**(To Avoid Intentionally Fraudulent Transfers under 11 U.S.C. §§ 544(b) and**

**548(a)(1)(A), and I.C.A. Chapter 684)**

**(against both Defendants)**

15. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 13 above, inclusive, as though fully set forth herein.

16. Plaintiff is informed and believes and thereon alleges that the Transfers were made to Defendant with an actual intent to hinder, delay, or defraud the Diocese's creditors.

17. At all relevant times, the Transfers were avoidable pursuant to 11 U.S.C. §548(a)(1)(A) and I.C.A. Chapter 684.

**SECOND CLAIM FOR RELIEF**

**(To Avoid Constructively Fraudulent Transfers Under 11 U.S.C. §§544(b) and 548(a)(1)(B)**

**and I.C.A. Chapter 684)**

**(against both Defendants)**

18. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 13 above, inclusive, as though fully set forth herein.

19. Plaintiff is informed and believes, and thereon asserts that at all relevant times, the Diocese: (a) was insolvent, or became insolvent as a result of the Transfers; (b)

was engaged in or was about to engage in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or transaction; or (c) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

20. Plaintiff is informed and believes, and thereon asserts, that Defendant did not give the Diocese, and the Diocese did not otherwise receive, reasonably equivalent value for the Transfers.

21. At all relevant times, the Transfers were avoidable pursuant to 11 U.S.C. §548(a)(1)(B) and I.C.A. Chapter 684.

### **THIRD CLAIM FOR RELIEF**

**(To Avoid Preferential Transfers – 11 U.S.C. §547)**

**(against both Defendants)**

22. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13 above, inclusive, as though set forth fully herein.

23. Alternatively, Plaintiff alleges that the Transfers, which were made to Defendant within 90 days prior to the Petition Date (the “Preferential Transfers”) were made to Defendant as a creditor of the Diocese and on account of an antecedent debt that the Diocese owed to Defendant before the Preferential Transfers were made.

24. The Preferential Transfers were made while the Diocese was insolvent.

25. The Preferential Transfers to Defendant enabled Defendant to receive more than it would have received if: (i) the Diocese’s case was a case under chapter 7 of the Bankruptcy

Code; (ii) if the Preferential Transfers had not been made; and (iii) Defendant received payment on the debt to the extent provided by the Bankruptcy Code.

26. Plaintiff is entitled to an order and judgment against Defendant under Section 547 of the Bankruptcy Code that the Preferential Transfers are avoided.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Recovery of Property – 11 U.S.C. §§ 544(b) and 550 and I.C.A. Chapter 684)**

27. Plaintiff repeats and realleges the allegations contained in each preceding paragraph of the Complaint as though set forth fully herein.

28. Upon information and belief, Plaintiff alleges that Defendant is the initial transferee of the Transfers and/or Preferential Transfers, or the immediate or mediate transferee of such initial transferee.

29. Plaintiff is entitled to avoid the Preferential Transfers under Sections 544(b), 547, or 548 of the Bankruptcy Code, and to avoid the Transfers under Sections 544 and 548 of the Bankruptcy Code, and I.C.A. Chapter 684. As Defendant is the initial, immediate, or mediate transferee of the Preferential Transfers and the Transfers, Plaintiff is entitled to recover for the estate the proceeds or value of the respective Transfers under 11 U.S.C. §550 and I.C.A. Chapter 684.

**WHEREFORE**, Plaintiff prays for judgment as follows:

1. For a determination that the Preferential Transfers and the Transfers are avoidable as preferential or fraudulent transfers pursuant to Sections 544, 547, and/or 548 of the Bankruptcy Code, and that Plaintiff is entitled to recover the Preferential Transfers and/or



the Transfers, or the value thereof, under Section 550 of the Bankruptcy Code;

2. For a determination that the Transfers are avoidable as fraudulent transfers pursuant to Iowa Code Annotated Chapter 684, and that Plaintiff is entitled to recover the value thereof under Iowa Code Annotated Chapter 684;

3. Prejudgment interest;

4. Costs of suit incurred herein; and

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: October 9, 2008

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Gillian N. Brown

By James I. Stang (CA Bar No. 94435 - IS9998306)  
: Hamid R. Rafatjoo (CA Bar No. 181564 - IS9998402)  
Gillian N. Brown (CA Bar No. 205132 - IS9998401)  
10100 Santa Monica Blvd., 11th Floor  
Los Angeles, California 90067-4100  
Telephone: 310/277-6910  
Facsimile: 310/201-0760  
Email: [jstang@pszilaw.com](mailto:jstang@pszilaw.com)  
[hrafatjoo@pszilaw.com](mailto:hrafatjoo@pszilaw.com)  
[gbrown@pszilaw.com](mailto:gbrown@pszilaw.com)

Attorneys for the Settlement Trustee

## **EXHIBIT 1**

UNIVERSITY OF ST. MARY OF THE LAKE  
CATHOLIC BISHOP OF CHICAGO, A CORPORATION SOLE  
1000 E. MAPLE AVENUE  
MUNDELEIN, ILLINOIS 60060  
(847) 566-6401 • FAX (847) 566-7330

# invoice

Invoice	DATE	NUMBER
	9/21/2006	3271

Billing Address  
DIOCESE OF DAVENPORT  
2706 N. GAINES ST.  
DAVENPORT, IA 52804

Service Address  
DIOCESE OF DAVENPORT  
2706 N. GAINES ST.  
DAVENPORT, IA 52804

DUE UPON RECEIPT

*Complete*

Charge Date	Charge Code	Description	Fixed Charge	Quantity	Unit Price	Amount	Sales Tax
9/20/2006	STUDENT	HAI DINH	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	JOSEPH SIA	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	JOEL BAUMGARTNER	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	THIEN NGUYEN	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	CORY CLOSE	0.00	0.00	0.00	0.00	
9/20/2006	TUITION PY	TUITION CHARGE PER YEAR	0.00	5.00	16,272.00	81,360.00	
9/20/2006	R & B PY	ROOM & BOARD PER YEAR	0.00	5.00	6,957.00	34,785.00	
9/20/2006	FEE RET YR	RETREAT FEE PER YEAR	0.00	5.00	185.00	925.00	
9/20/2006	FEE TECH Y	TECHNOLOGY FEE PER YEAR	0.00	5.00	250.00	1,250.00	

Payment Terms: Net 10 Days

Sales Tax: 0.00

Total: \$118,320.00

Customer ID DAVE01  
Customer Name DIOCESE OF DAVENPORT

Invoice ID 3271

Invoice Date 9/21/2006

Charge Date	Charge Code	Description	Fixed Charge	Quantity	Unit Price	Amount	Sales Tax
9/20/2006	STUDENT	HAI DINH	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	JOSEPH SIA	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	JOEL BAUMGARTNER	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	THIEN NGUYEN	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	CORY CLOSE	0.00	0.00	0.00	0.00	
9/20/2006	TUITION PY	TUITION CHARGE PER YEAR	0.00	5.00	16,272.00	81,360.00	
9/20/2006	R & B PY	ROOM & BOARD PER YEAR	0.00	5.00	6,957.00	34,785.00	
9/20/2006	FEE RET YR	RETREAT FEE PER YEAR	0.00	5.00	185.00	925.00	
9/20/2006	FEE TECH Y	TECHNOLOGY FEE PER YEAR	0.00	5.00	250.00	1,250.00	

Payment Terms: Net 10 Days

Sales Tax: 0.00

DUE UPON RECEIPT

Total: \$118,320.00

EXHIBIT ☒

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UNIVERSITY OF ST. MARY OF THE LAKE  
CATHOLIC BISHOP OF CHICAGO, A CORPORATION SOLE  
1000 E. MAPLE AVENUE  
MUNDELEIN, ILLINOIS 60060  
(847) 566-6401 • FAX (847) 566-7330

# invoice

Invoice	DATE	NUMBER
	9/21/2006	3271

Billing Address  
DIOCESE OF DAVENPORT  
2706 N. GAINES ST.  
DAVENPORT, IA 52804

Service Address  
DIOCESE OF DAVENPORT  
2706 N. GAINES ST.  
DAVENPORT, IA 52804

9/27/06

DUE UPON RECEIPT

Charge Date	Charge Code	Description	Fixed Charge	Quantity	Unit Price	Amount	Sales Tax
9/20/2006	STUDENT	HAI DINH	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	JOSEPH SIA	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	JOEL BAUMGARTNER	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	THIEN NGUYEN	0.00	0.00	0.00	0.00	
9/20/2006	STUDENT	CORY CLOSE	0.00	0.00	0.00	0.00	
9/20/2006	TUITION PY	TUITION CHARGE PER YEAR	0.00	5.00	16,272.00	81,360.00	
9/20/2006	R & B PY	ROOM & BOARD PER YEAR	0.00	5.00	6,957.00	34,785.00	
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9/20/2006	FEE TECH Y	TECHNOLOGY FEE PER YEAR	0.00	5.00	250.00	1,250.00	

Payment Terms: Net 10 Days

Sales Tax: 0.00

Total: \$118,320.00

Customer ID DAVE01

Invoice ID 3271

Customer Name DIOCESE OF DAVENPORT

Invoice Date 9/21/2006

Charge Date	Charge Code	Description	Fixed Charge	Quantity	Unit Price	Amount	Sales Tax
			0.00	0.00	0.00	0.00	

DIOCESE OF DAVENPORT  
2706 N. GAINES ST.  
DAVENPORT, IA 52804-1998

QUAD CITY BANK & TRUST COMPANY  
33-22/739

23788

CONTROL NO. 2386-20443-7

PAY

DATE 09/21/2006

AMOUNT

\*\*\*\*\*118,320 Dollars and 00 Cents

\*\*118,320.00

TO THE UNIVERSITY OF ST. MARY OF THE LAKE  
ORDER 1000 E. MAPLE AVE.  
OF MUNDELEIN IL 60060-1174

*Chris [Signature]*

0023788 073902232 35 PLO 200

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